

AUG 15 2006



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MA 02114-2023



SDMS DocID

256600

URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

[Date] **AUG 15 2006**

[PRP Name]
[PRP Address]

Supervisory Records Center
SITE: _____
BREAK: _____
OTHER: _____

Re: Special Notice Pursuant to Section 122(e) of CERCLA for a Remedial Design/Remedial Action at the Shpack Landfill Superfund Site in Norton and Attleboro, MA

Dear [Name of Contact Person]:

This letter follows the General Notice Letter issued to you by the United States Environmental Protection Agency ("EPA") in connection with the Shpack Landfill Superfund Site in Norton and Attleboro, MA (the "Site"). This letter provides notice of a period of negotiations, pursuant to Section 122(e) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9622(e), during which EPA is seeking your company's voluntary performance of certain response actions necessary at the Site. The actions which EPA is seeking you to perform are detailed in the enclosed documents.

In addition, this letter contains a formal request for reimbursement of the costs, including interest thereon, that have been incurred and that are expected to be incurred by EPA in response to the environmental problems at the Site.

EPA has documented the release or threatened release of hazardous substances, pollutants, or contaminants at the Site. EPA has spent and is considering spending public funds on actions to control such releases or threatened releases at the Site pursuant to CERCLA, 42 U.S.C. §§ 9601 *et seq.*

Under Section 106(a) and Section 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), and other laws, responsible parties may be obligated to implement response actions deemed necessary by EPA to protect the public health, welfare or environment. Responsible parties may also be liable for all costs incurred by the government in responding to any release or threatened release of contaminants at the Site. Such costs may include, but are not limited to, expenditures for investigation, planning, cleanup response and enforcement activities.

Unless EPA reaches an agreement under which a responsible party or parties, such as yourself,

***Commencement of Cleanup Negotiations and Request to Participate
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will properly perform the response actions at the Site, EPA may itself perform these actions, order responsible parties to perform them, or seek a judicial order requiring responsible parties to perform them. EPA may also seek to recover all costs expended in response to the release or threatened release at the Site.

As indicated in the general notice letter previously issued to you, EPA has information indicating that you are a potentially responsible party, under Section 107(a) of CERCLA, with respect to this Site. By this letter, EPA encourages you, as a potentially responsible party, to enter into negotiations to voluntarily perform the response activities described below which EPA has determined are required at the Site, and to reimburse EPA for certain costs incurred to date.

UPCOMING RESPONSE ACTIONS

As set out more specifically in the enclosed documents, EPA is seeking to have the following work conducted at the Site:

1. The design and implementation of the remedial action selected and approved by EPA for the Site;
2. Operation, maintenance and monitoring necessary at the Site.

In addition to these activities, EPA may, pursuant to its authorities under CERCLA and other laws, decide that other studies or clean-up activities are necessary to protect public health, welfare or the environment.

DEMAND FOR PAYMENT OF COSTS

In accordance with CERCLA and other authorities, EPA has undertaken certain actions and incurred costs in response to conditions at the Site. The costs to date associated with these actions are approximately \$2,943,903.72, including interest.¹ EPA anticipates that it will expend additional funds for response activities at the Site under the authority of CERCLA and other laws, including those response activities described below.

In accordance with Section 107(a) of CERCLA, demand is hereby made for payment of the above amount, including the interest authorized to be recovered under that Section and under

¹ For those PRPs that joined a past cost settlement with EPA in June 1991 to settle EPA's claims for past costs through May 2, 1990, the above-demand for unrecovered costs does not reflect EPA's cost compromise that was included in the 1991 settlement agreement. See Administrative Agreement for the Shpack Landfill Superfund Site, Docket No. I-90-1114.

any other provisions of law. Demand is also hereby made under these authorities for payment of all future costs, and interest thereon, that EPA may accrue in regard to the Site.

In the event the addressee of this notice intends or has already filed for dissolution or reorganization under bankruptcy laws, you are hereby requested to include EPA-Region I, and the United States Department of Justice on any mailing or notice lists used in that proceeding. The United States reserves the right to file a proof of claim or application for reimbursement of administrative expenses in such a proceeding.

SPECIAL NOTICE AND NEGOTIATION MORATORIUM

EPA has determined that use of the Section 122(e) Special Notice Procedures specified in CERCLA will facilitate a settlement between EPA and potentially responsible parties ("PRPs") for this site. Therefore, under Section 122 of CERCLA, receipt of this letter triggers a sixty (60) day moratorium on certain EPA response activities at the Site. During this sixty (60) day period, the PRPs, including you, are invited to participate in formal negotiations with EPA.

The purpose of these negotiations is to reach an agreement whereby the PRPs perform certain response activities required at the Site as set out in the enclosed documents. By the end of the sixty (60) day negotiation period, the PRPs must have provided a written good faith offer, as described below, to EPA. The sixty (60) day negotiation moratorium will be extended for an additional sixty (60) days if PRPs provide EPA with a good faith offer to conduct or finance the remedial design/remedial action and pay outstanding costs.

PRP STEERING COMMITTEE

Some of the PRPs have retained common counsel to help organize an effective steering committee. We encourage you to contact common counsel at the following address, and organize with the other PRPs, to form a steering committee:

Michael Last, Esq.
One Financial Center
Boston, Massachusetts 02111-2659
phone 617-951-1192
fax: 617-542-7437
email: mlast@lastlaw.com

Establishing an effective steering committee is critical for successful negotiations with EPA. EPA recognizes that the organization of a steering committee and the allocation of responsibility among PRPs may be difficult. If PRPs are unable to organize an effective steering committee or to reach consensus among themselves on allocation, we encourage the use of the services of a neutral third party to facilitate negotiations. If requested, EPA can provide a list of experienced third-party neutrals and help arrange for the PRPs to meet with such a neutral.

NEGOTIATION PROCEDURES AND GOOD FAITH OFFER

Under the terms of Section 122(e) of CERCLA, responsible parties have sixty (60) days from the date of receipt of this notice in which to make a good faith proposal, in writing, to perform or finance the response activities. If a good faith proposal is submitted by responsible parties within the sixty (60) day period, EPA will negotiate with the parties making the proposal during the remainder of the negotiation moratorium period in an attempt to reach a final agreement with those parties. Any agreement reached for the performance or financing of the response actions at the Site will be embodied in a consent decree containing terms consistent with the provisions of CERCLA and EPA policy.

Enclosed with this letter you will find a draft site-specific consent decree which is based in large part on a national model CERCLA RD/RA consent decree. In accordance with EPA's model consent decree and its underlying procedures, many provisions of the decree are standard language which reflect legal and procedural terms that have been found acceptable to both the United States and PRPs across the country. Use of the model provisions is designed to reduce the time and resources consumed during RD/RA settlement discussions by reducing across the board the number of issues the United States will negotiate with the PRPs.

A good faith offer to conduct the RD/RA is a written proposal that demonstrates the PRPs' qualifications and willingness to conduct the design, implementation, and monitoring of the remedy for the RD/RA and must include all of the following elements:

1. A general statement of willingness by the PRPs to conduct the work consistent with the enclosed draft documents.
2. A written paragraph-by-paragraph response to the enclosed consent decree and statement of work, in redline/strikeout. Please note that if you fail to respond to any portion of these documents in redline/strikeout in the submission of a good faith offer, EPA will not consider negotiation of those terms at a later date. In addition, you should provide a site-specific justification for each proposed change in the enclosed documents, along with a listing of the subset of changes which you consider major issues.
3. A demonstration of the PRPs' technical capability to carry out the work including the identification of the firms(s) that may actually conduct the work or a description of the process they will use to select the firm(s).
4. A demonstration of the PRPs' capability to finance the work.
5. A specific statement of willingness by the PRPs to reimburse EPA for all of, or a significant portion of, past response costs and future costs to be incurred in overseeing the PRPs conduct of the work.

6. The name, address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

If EPA determines that a good faith proposal has not been submitted within the first sixty (60) days of the moratorium period, EPA may thereafter terminate the negotiation moratorium period pursuant to Section 122(e)(4) of CERCLA and commence such cleanup or enforcement actions as may be appropriate given the status of negotiations.

Because responsible parties may be required to pay damages for injury to, destruction of, or loss of natural resources, including the costs to assess such damages, EPA has notified the Federal Natural Resource Trustee(s) of its intent to enter into negotiations for the performance or financing of response actions at the Site. Please note that natural resource damage claims, if any, are not included in the enclosed documents.

INFORMATION RELEASE

In order to assist responsible parties in their preparation of a good faith proposal, EPA is including with this notification an updated list of the names and addresses of PRPs to whom this notification is being sent. This list represents EPA's current findings on the identities of PRPs. Inclusion on or exclusion from the list does not constitute a final determination by the Agency concerning the liability of any party for the hazard or contamination at the Site. EPA has previously released to the PRPs copies of witness interviews and CERCLA § 104(e) requests for information letters and responses. If you have evidence regarding the liability of any party for response actions at the Site which has not already been provided to EPA, you should provide that information no later than thirty (30) days from the date of this letter.

ADMINISTRATIVE RECORD

In accordance with Section 113(k) of CERCLA, EPA has established an administrative record containing the documents used by EPA to select the appropriate response action for the Site. This administrative record is available to the public for inspection and comment at:

EPA Records Center
1 Congress Street
Boston, MA 02114-2023
Telephone No. 617-918-1440

Please call the EPA Records Center for current hours and directions.

The administrative record is also available at the Norton Public Library, 68 East Main Street, Norton, MA 02766.

PRP RESPONSE AND EPA CONTACT PERSON

You have sixty (60) calendar days from the date of receipt of this notice to submit a good faith offer, as described above, to EPA. Your offer should be submitted to EPA by the steering committee, unless the PRPs are unable to form a steering committee or you are unwilling or unable to agree to the terms which the steering committee intends to offer to EPA.

If EPA does not receive a timely good faith offer from you, either through the steering committee or individually, EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the Site, and that you have declined any involvement in performing the response activities. In such event, EPA may terminate negotiations moratorium with respect to you, and may seek to hold you liable for the cost of the clean-up activities performed at the Site. In addition, EPA may issue an order or seek a court order requiring you to perform the response activities at the Site.

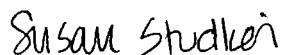
Your response to this special notice letter should be sent to:

Melissa Taylor, Remedial Project Manager
U.S. Environmental Protection Agency
Office of Site Remediation and Restoration
1 Congress Street, Suite 1100 (HBO)
Boston, MA 02114-2023

If you wish to speak with a member of the EPA case team assigned to this site regarding the enclosed documents or the negotiation process, please contact Audrey Zucker, Senior Enforcement Counsel, at 617-918-1788.

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final agency position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by conditions at the Site, EPA urges that immediate attention and a prompt response be given to this letter.

Sincerely,



Susan Studlien
Director, Office of Site Remediation and Restoration

Enclosures

***Commencement of Cleanup Negotiations and Request to Participate
Shpack Landfill Superfund Site***

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cc: Audrey Zucker, EPA Office of Environmental Stewardship
Melissa Taylor, EPA Remedial Project Manager
Superfund Record Center
Deanna Chang, U.S. Department of Justice
Andy Cohen, Massachusetts DEP, Office of General Counsel
David Buckley, Massachusetts DEP Remedial Project Manager
Dale Young, MA Executive Office of Environmental Affairs
Andrew Raddant, U.S. Department of the Interior
Ken Finkelstein, U.S. National Oceanic and Atmospheric Administration
Michael Last, Esq.

***List of Potentially Responsible Parties
RD/RA Special Notice Letter Recipients
Shpack Landfill Superfund Site***

City of Attleboro

c/o Arthur P. Kreiger, Esq.
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Attleboro Landfill, Inc.

c/o Michelle N. O'Brien, Esq.
Mackie, Shea & O'Brien, PC
137 Newbury Street
Boston, MA 02116
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fax: 617-266-5237
email: MNO@lawmso.com

Albert Dumont

c/o Michelle N. O'Brien, Esq.
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Shpack Landfill Superfund Site***

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Bank of America, as Trustee
under the will of Lloyd G. Balfour
c/o Michael D. Bliss, Esq.
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fax: 617-375-9103
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CCL Custom Manufacturing, Inc.
c/o Jonathan A. Murphy, Esq.
Lester Schwab Katz & Dwyer, LLP
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Chevron USA, Inc., for Kewanee Industries, Inc.
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General Cable Industries

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Handy & Harman

c/o John Agnello, Esq.
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Swank, Inc.

c/o Lee Henig-Elona, Esq.
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New York, New York 10174
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Teknor Apex Company, Inc.

c/o Bret W. Jedelev, Esq.
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Providence, RI 02903
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RD/RA Special Notice Letter Recipients
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Texas Instruments

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U. S. Department of Energy

Mathew Oakes
Environmental Defense Section
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(With a copy to) Steven R. Miller
Deputy Assistant General Counsel
For Environment, GC-51
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RD/RA Special Notice Letter Recipients
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c/o Peter J. Kelly, Esq.
Vedder, Price, Kaufman & Kammholz, P.C.
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DRAFT
RD/RA STATEMENT OF WORK
Shpack Landfill Superfund Site
AUGUST 2006

I. INTRODUCTION AND PURPOSE/FUSRAP CLEANUP ISSUES

INTRODUCTION AND PURPOSE

This Remedial Design/Remedial Action (RD/RA) Statement of Work (SOW) defines the response activities and deliverable obligations that the Settling Defendants are obligated to perform in order to implement the Work required under the Consent Decree at the Shpack Landfill Superfund Site in Norton/Attleboro, MA (the "Site"). The activities described in this SOW are based upon the United States Environmental Protection Agency (EPA) Record of Decision (ROD) for the Site signed by the Office Director, Office of Site Remediation and Restoration, US EPA Region I, on September 30, 2004.

FUSRAP CLEANUP ISSUES

The Parties recognize that a portion of the cleanup work required by the Record of Decision is expected to be performed by the United States Army Corps of Engineers (the "Army Corps") pursuant to the Formerly Utilized Sites Remedial Action Program ("FUSRAP") (hereafter, the "FUSRAP" cleanup). In particular, the Army Corps plans to excavate all soils and sediments at the Site in excess of soil and sediment cleanup levels for radioactive contaminants (i.e., Uranium and Radium) provided in EPA's ROD. As part of this Consent Decree and SOW, the Settling Defendants shall not be required to commence on-site excavation of soils and sediments until EPA notifies the Settling Defendants that the Army Corps has completed the FUSRAP Cleanup.¹

The parties acknowledge that the FUSRAP Cleanup is currently expected to be performed prior to the Settling Defendants' excavation of soils and sediments at the Site. However, in the event that the FUSRAP Cleanup is delayed, as determined by EPA, the Settling Defendants shall prepare a plan (including a proposed schedule) for submission to EPA detailing all portions of the soil and sediment excavation work, exclusive of the FUSRAP Cleanup, that may be performed by the Settling Defendants prior to performance of the FUSRAP Cleanup. Upon EPA approval or modification of this plan, the Settling Defendants shall perform all activities described in the plan.

¹ Settling Defendants shall be required to commence and perform all activities required by the Consent Decree and SOW, exclusive of on-site excavation of soils and sediments, without regard to whether the Army Corps has completed the FUSRAP Cleanup.

The Settling Defendants shall use best efforts to coordinate and cooperate with the Army Corps with respect to implementation of the Work at the Site. In addition, as part of sampling performed during the Remedial Action and after the FUSRAP Cleanup has been completed, and, if necessary, sampling performed in connection with periodic reviews the Site, the Settling Defendants shall be responsible for confirming that the soil cleanup standards for radioactive contaminants established in the ROD have been met. (See, e.g., Settling Defendant's responsibilities for DEMONSTRATION OF COMPLIANCE, Section V.D.8, below). Finally, in the event that after the completion of the FUSRAP Cleanup the Settling Defendants detect soil or sediment contamination at the Site that exceeds the soil and sediment cleanup standards for radioactive contaminants established in the ROD, the Settling Defendants shall be responsible for excavating such soils and sediments, and transportation and disposal of such soils and sediments at an appropriately licensed disposal facility, consistent with the Settling Defendants' agreement with the Settling Federal Agencies. Finally, in the event that the Settling Defendants detect such contamination at the Site, they shall notify EPA, Massachusetts Department of Environmental Protection ("MA DEP"), and the Settling Federal Agencies within thirty days after receipt of any sampling results that reveal such contamination.

II. DEFINITIONS

The Site shall refer to the definition of "Site" as provided in the Consent Decree. Other definitions provided in the Consent Decree are incorporated herein by reference. In addition, the following definitions shall apply to this SOW:

- A. "Design" shall mean an identification of the technology and its performance and operational specifications, in accordance with all applicable federal, state, and local laws, including, but not limited to:
1. all computations used to size units, determine the appropriateness of technologies, and the projected effectiveness of the system;
 2. materials handling and system layouts for the excavation, if required, and treatment of soils, the extraction and treatment of groundwater, and the decontamination and demolition of facilities to include size and location of units, treatment rates, location of electrical equipment and pipelines, and treatment of effluent discharge areas;
 3. scale drawings of all system layouts identified above and including, but not limited to, excavation cross-sections, and well cross-sections;
 4. quantitative analysis demonstrating the anticipated effectiveness of the Remedial Design to achieve the Performance Standards;
 5. technical specifications which detail the following:
 - a. size and type of each major component; and

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- b. required performance criteria of each major component;
 - 6. description of the extent of ambient air monitoring including equipment, monitor locations, and data handling procedures; and
 - 7. description of access, land easements and/or other institutional controls , including related documents (e.g., survey plans, title insurance, etc.)
- B. Particular areas are defined as follows:
- 1. The "Inner Rung" area of the Site means the area of Chartley Swamp closest to the southeast portion of the Site. Figure 5 of the Record of Decision (ROD) shows the rough boundary of the Inner Rung and Outer Rung of Chartley Swamp.
 - 2. The "Tongue Area" of the Site is shown in Figure 2 of the ROD.
 - 3. "Union Road House #1" and "Union Road House #2" are the off-site residential parcels labeled in Figure 3 of the ROD.
 - 4. "On-Site Seasonal Wetlands" refers to the area of the Site shown in Figure 4 of the ROD.

III. SELECTED REMEDY

The ROD describes the following Remedial Action for the Site as specified in the Record of Decision. The estimated time for construction is 9-16 months. The following are the components of the remedy to be performed by the Settling Defendants:

- A. Coordination with local, state and federal agencies for excavating source area materials within a wetland and associated buffer zone;
- B. Preparation and implementation of a traffic control plan to adequately manage the increased volume of truck traffic associated with transportation of chemical and radiological impacted source material from the Site;
- C. Preparation and implementation of a transportation and emergency spill contingency plan;
- D. Relocation of existing power line structures as needed to implement the rest of the remedy in coordination with National Grid.
- E. Connecting two residences to public water. The two residences are identified as Union Road House 1 and Union Road House 2; Private well closure at these two residences will be performed in accordance with MCP requirements.

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- F. Mobilization/demobilization of all personnel and equipment to the Site for construction activities;
- G. Clearing and grubbing areas of the Site requiring excavation;
- H. Establishing a survey grid to conduct sequential consolidation of grid cells to minimize generation of large quantities of groundwater with one open excavation;
- I. Based on the selected risk scenario for the Site (Adjacent Resident without Groundwater Consumption), excavation and off-site disposal of soil and sediment exceeding radioactive and chemical Cleanup levels including dioxin and PCBs as identified in Tables L-1 and L-3 herein;
- J. Excavation and off-site disposal of sediment from the Inner Rung and exceeding the cleanup levels listed in Table L-2. Design studies will more fully delineate the quantities of required sediment excavation from the Inner Rung area;
- K. De-watering of open areas as needed in each area of the Site;
- L. Transportation of all impacted soils via truck and rail to an appropriate offsite disposal facility;
- M. All excavated soil and sediments disposed of in an appropriate disposal facility, including one in accordance with TSCA and the TSCA determination included as part of the ROD;
- N. Placement of clean fill in open areas to backfill to grade and/or wetlands restoration/replication as appropriate;
- O. Surveying vernal pools and spotted turtle habitat, focusing on the spotted turtle and marbled salamander, and evaluating the habitat for any other rare species or species of special concern that may be found on the Site;
- P. Protecting vernal pools and areas containing rare or species of special concern, if possible, or restoring/replicating these areas if impacted. An impact minimization and habitat restoration plan must be prepared and followed in conjunction with this work;
- Q. Conducting all work in wetlands areas in accordance with the Wetland Determination included in the ROD. In addition, work in wetlands, including replication and restoration, must comply with the Wetlands Protection Act Regulations, 310 CMR 10 as well as all other applicable or relevant and appropriate requirements ("ARARs") identified for this component of the remedy.
- R. Installation of a temporary chainlink fence surrounding the entire Site, with access gates to secure the Site during the design and construction phases of the cleanup;

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- S. Preparation and implementation of a surface water, sediment and groundwater monitoring program, including installation of additional wells around the perimeter of the Site; this sampling will include but not be limited to sampling of sediment and surface water to ensure that re-contamination is not occurring.
- T. Performance of 5-year reviews to monitor effectiveness of the remedy;
- U. Implementation of any institutional controls necessary to restrict future use of property and groundwater, and monitoring compliance with institutional controls.

IV. PERFORMANCE STANDARDS

The Settling Defendants shall design, construct, operate, monitor, and maintain the Remedial Action in compliance with all ARARs, statutes and regulations identified in the ROD and all requirements of the Consent Decree and this SOW.

The Settling Defendants shall excavate contaminated soil and sediment at the Site that exceed the following Performance Standards :

A. Cleanup Levels and Interim Cleanup Levels

The Cleanup Levels for soil and Interim Cleanup Levels for sediment in the inner rung of Chartley Swamp, and sediment in the interior wetlands respectively are presented below as excerpted from Tables L-1, L-2 and L-3 of the ROD.

1. Soil

TABLE L-1 SOIL CLEANUP LEVELS, SHPACK SITE

Contaminant	Cleanup Level
Dioxin (TEQ)	1.0 ppb
Radium 226	3.1 pCi/gm
Uranium 234	220 pCi/gm
Uranium 235	52 pCi/gm
Uranium 238	110 pCi/gm
Arsenic	12 ppm
Benzo(a)anthracene	28 ppm
Benzo(a)pyrene	2.8 ppm
Benzo(b)fluoranthene	28 ppm
Dibenz(a,h)anthracene	2.8 ppm
Lead	1400 ppm
Nickel	7000 ppm
Total Uranium	1100 ppm

2. Sediment

Table L-2: Interim Cleanup Levels, Inner Rung, Chartley Swamp

Contaminant	Cleanup Level (mg/kg)
Arsenic	8.4
Cadmium	6.2
Copper	41
Chromium	2,769
Lead	32
Mercury	0.89
Silver	0.89
Beryllium	45
Zinc	1591

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Table L-3: Interim Cleanup Levels, Sediments in the On-Site Seasonal Wetlands

Contaminant	Cleanup Level (mg/kg)
Benzo(a)anthracene	1.2
Benzo(a)pyrene	1.3
Benzo(b)fluoranthene	1.3
Benzo(k)fluoranthene	1.3
Chrysene	1.3
Dibenz(a,h)anthracene	1.3
Indeno(1,2,3)pyrene	1.3
Aroclor (1254)	0.27
Arsenic	188
Barium	853
Vanadium	448
DDT	0.027
Antimony	39
Beryllium	5
Cadmium	103
Chromium	427
Copper	122
Lead	551
Mercury	0.26
Nickel	7943
Silver	187
Zinc	437

B. Other Performance Standards

1. **Final Cleanup Levels for Sediment:**
The Interim Cleanup Levels for Sediments in the Inner Rung and On-Site Seasonal Wetlands in Tables L-2 and L-3 in the ROD may be modified based on the results of the studies outlined in Section V.B.1 to be performed by the Settling Defendants as part of the Remedial Design. EPA, after reasonable opportunity for review and comment by MA DEP, will select the Final Cleanup Levels for the Inner Rung and the On-Site Seasonal Wetlands. The Settling Defendants shall incorporate the Final Cleanup Levels for the Inner Rung and the On-Site Seasonal Wetlands in the 100% Remedial Design, and shall achieve these Final Cleanup Levels during the Remedial Action. Pursuant to the requirements of this section, the Settling Defendants are required to attain the Interim Cleanup Levels and any other Final Cleanup Levels established by EPA.
2. **Wetlands Restoration**
All work in wetlands, including replication and restoration, shall be conducted in accordance with the Wetland Determination in the ROD, and must comply with the Wetlands Protection Act Regulations, 310 CMR 10, as well as all other ARARs identified for this component of the remedy. The wetland replication/restoration shall include at minimum: detailed plans illustrating all existing and proposed contour elevations; soil profiles for imported soils; a construction schedule; a planting plan including the number, size, and species of all plants; groundwater elevations; description of the replicated wetland function and values; physical features that replicate the vernal pool habitat and rare species habitat functions of the existing wetlands including coarse woody debris, snags and pit and mound topography; and a 5-year monitoring plan. The wetland replication/restoration shall commence in the first growing season after the construction activity has been completed.
3. **Institutional Controls**
Institutional controls in the form of a Grant of Environmental Restriction and Easement that runs with the land and is enforceable under the laws of the Commonwealth of Massachusetts, or in some other form, shall be implemented in order to prevent uses of the Site and parcels downgradient of the Site that may pose a risk to human health or have an adverse impact on the remedy. Once implemented, the institutional controls shall be maintained, monitored, and enforced.
4. **Waterline**
The design and construction of the waterline to Union Road House 1 and 2, as described in the ROD, shall meet applicable federal, state and local plumbing codes including American Water Works Association (AWWA). The AWWA code includes sections on materials, installation, flushing, etc. In addition, the waterline shall be in compliance with all applicable

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federal, state, and local water supply and fire protection laws, and all rules, regulations and standards of the Norton or Attleboro Water District, as applicable.

V. REMEDIAL DESIGN

The Remedial Design activities required for the Shpack Landfill Superfund Site shall include, but are not limited to: (a) an initial remedial steps phase; and (b) a design phase. The Settling Defendants shall submit to EPA the required deliverables as stated herein for each of these Remedial Design activities. Except where expressly stated otherwise in this SOW, each deliverable shall be subject to review and approval or modification by EPA, after reasonable opportunity for review and comment by the Massachusetts Department of Environmental Protection, in accordance with Section XI of the Consent Decree, EPA Approval of Plans and other Submissions. It may be desirable for some aspects of remedial design to proceed along separate timelines (e.g., pre-design studies in Section B, waterline design).

A. Initial Remedial Steps Phase

The INITIAL REMEDIAL STEPS PHASE shall consist of developing and implementing a site monitoring plan.

1. Within 45 days after receipt of notice of the lodging of the Consent Decree, the Settling Defendants shall submit a SURFACE WATER AND GROUNDWATER MONITORING PLAN to EPA for review and approval or modification, after reasonable opportunity for review and comment by the Massachusetts Department of Environmental Protection. The SURFACE WATER AND GROUNDWATER MONITORING PLAN shall consist of semi-annual monitoring of saturated overburden, bedrock and residential wells until implementation of the approved Project Operations Plan (POP) for the Remedial Action. The SURFACE WATER AND GROUNDWATER MONITORING PLAN shall include the following:
 - a. a POP which shall be prepared in support of all fieldwork to be conducted according to the SURFACE WATER AND GROUNDWATER MONITORING PLAN, and which shall include, but not be limited to, the following:
 - 1) a Site Management Plan (SMP);
 - 2) a Sampling and Analysis Plan (SAP) which includes:
 - a) a Quality Assurance Project Plan (QAPP); and
 - b) a Field Sampling Plan (FSP)

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- 3) a site-specific Health and Safety Plan (HSP); and
- 4) a Community Relations Support Plan (CRSP).

The Settling Defendants shall prepare this POP in accordance with Attachment A.

- 5) a detailed description of how field data will be interpreted and presented in subsequent quarterly monitoring reports including, but not limited to, statistical methods, iso-concentration contour plots, and groundwater potentiometric surface maps; and
 - 6) a well maintenance program which shall contain provisions for inspection, continued maintenance, repair, and prompt and proper abandonment, if necessary.
2. Within 90 days of receiving EPA's approval or modification of the SURFACE WATER AND GROUNDWATER MONITORING PLAN, the Settling Defendants shall submit to EPA and MA DEP the first semi-annual SURFACE WATER AND GROUNDWATER MONITORING REPORT. The Settling Defendants shall submit additional SURFACE WATER AND GROUNDWATER MONITORING REPORTS to EPA and MA DEP on a semi-annual basis until approval or modification by EPA, after reasonable opportunity for review and comment by the Massachusetts Department of Environmental Protection, of the monitoring program developed under the REVISED POP for the Remedial Action.

The Plan shall also include provision of sampling of the Union Road House 1 and 2 residential wells identified in the Record of Decision for replacement and abandonment by a public water supply. This sampling shall continue on a semi-annual basis until abandonment of the two residential wells.

Under the Plan, sampling of the groundwater monitoring wells at Union Road House 1 shall be performed on a semi-annual basis and shall continue to be performed on a semi-annual basis after abandonment of the residential wells at Union Road House 1 and 2. The Plan shall specify that, in the event that groundwater contamination is found in the groundwater monitoring wells (or the residential well as sampled prior to abandonment) at Union Road House 1 in excess of vapor intrusion screening criteria, as specified in the Plan and as may modified thereafter as directed by EPA, the Settling Defendants shall propose appropriate actions to address such potential vapor intrusion, including, additional sampling, additional remedial measures (such as installation of vapor barriers), and additional institutional controls to ensure that current and future construction is designed and maintained to address vapor intrusion.

Upon approval or modification by EPA, the Settling Defendants shall perform all activities set forth in the Plan.

B. Remedial Design Work Plan and Revised POP

The Remedial Design Phase shall consist of developing a REMEDIAL DESIGN WORK PLAN and REVISED POP including any investigations necessary for developing the design.

Within 90 days after receipt of notice of lodging of the Consent Decree, the Settling Defendants shall submit a REMEDIAL DESIGN WORK PLAN and REVISED POP for review and approval or modification by EPA, after reasonable opportunity for review and comment by the Massachusetts Department of Environmental Protection. The REMEDIAL DESIGN WORK PLAN and REVISED POP shall include at a minimum, the following items:

1. detailed descriptions of all activities to be undertaken in connection with any investigations necessary for the design and implementation of the Remedial Action. The detailed descriptions shall contain a statement of purpose and objectives of the investigation, identification of the specific activities necessary to complete the investigation, and a detailed schedule for performance of the investigation. The REMEDIAL DESIGN WORK PLAN shall be consistent with Section VI of the Consent Decree (Performance of Work by Settling Defendants), and Section L of the ROD (Selected Remedy), this SOW, and EPA's current RD/RA guidance (OSWER Directive 9355.0-4a). The REMEDIAL DESIGN WORK PLAN shall describe in detail, at a minimum, the following activities to be undertaken during the Remedial Design Phase per Section L. of the Record of Decision:
 - a. Performance of pre-design and design studies to prepare for the relocation of existing power line structures in coordination with National Grid as needed to implement the rest of the remedy.
 - b. Site specific sediment toxicity testing to be conducted during pre-design efforts to ensure that the selected cleanup standards are protective of the benthic invertebrate community. As part of remedial design, toxicity testing will be conducted in Chartley Swamp and the onsite seasonal wetlands to confirm that the selected sediment cleanup levels in Tables L-2 and L-3 are protective of the benthic community. Toxicity testing will consist of collecting bulk sediment samples for use in ten day chironomid toxicity tests to assess the impact of contaminated sediment on growth and survival. Three sampling locations will be selected for each of the exposure areas (i.e. Chartley Swamp and the onsite seasonal wetlands), two in an area near where COC concentrations

are the highest (near the Tongue Area in Chartley Swamp), and one to represent an area with lower COC concentrations so as to provide a gradient across which potential effects can be observed and to provide information useful for targeting potential remediation areas. If EPA determines that the sediment toxicity testing shows that the selected sediment cleanup levels in Tables L-2 and L-3 are not protective of the benthic community, EPA will set new sediment cleanup levels that it determines will be protective of the benthic community.

- c. Sediment sampling must be performed in the inner rung of Chartley Swamp as necessary to more fully delineate the extent of sediment exceeding cleanup levels in Table L-2.
 - d. An assessment of ecological risk posed by soil in the Combined Field and Shrubland habitat (shown in Fig. 4 of the ROD) of the Site must be performed utilizing food chain models developed to evaluate receptor risk from soil in other areas of the Site following "Ecological Risk Assessment Guidance for Superfund, Process for Designing and Conducting Ecological Risk Assessments (EPA 540-R-97-006)". If EPA determines that the food chain modeling shows that the selected soil cleanup levels in Table L-1 do not sufficiently address ecological risk posed by soil in these areas, EPA will set new soil cleanup levels that it determines will be sufficiently address ecological risk.
 - e. Preparation of a design study to determine options for limiting the impact of dewatering on wetlands.
 - f. Designs, including plans and technical specifications, for the extension of a waterline from either the town of Norton or the city of Attleboro public water supply to Union Road House 1 and 2, with adequate flow for both drinking and fire protection purposes, and with provision for connections to the plumbing of any other existing residences along the water line. In addition, designs shall be provided for the closure of the residential wells at Union Road House 1 and 2 in accordance with state and local requirements, including the MCP requirements.
 - g. Any other investigations required by EPA or proposed by the Settling Defendants and approved by EPA.
2. REVISED REMEDIAL DESIGN POP prepared in support of all fieldwork to be conducted according to the REMEDIAL DESIGN WORK PLAN. This REVISED POP shall be prepared in accordance with Section V.A.1.a above.

C. 30% DESIGN SUBMISSION (AND INSTITUTIONAL CONTROLS PLAN)

Within 90 days of receiving EPA's approval or modification of the REMEDIAL DESIGN WORK PLAN and REVISED POP, the Settling Defendants shall submit to EPA the 30% REMEDIAL DESIGN for review and approval or modification by EPA, after reasonable opportunity for review and comment by the Massachusetts Department of Environmental Protection. The 30% submission shall include, at a minimum, the results of all field investigations, pre-design studies in accordance with section V.b.1., a proposal for the Final Cleanup Levels for the Inner Rung and in the On-Site Seasonal Wetlands, a discussion of how ARARs are being met by the design, the design criteria, the project delivery strategy, preliminary plans, drawings, sketches, and calculations, an outline of the required technical specifications, a preliminary construction schedule and costs, an INSTITUTIONAL CONTROLS PLAN, and, as appropriate, descriptions of how Respondents will address each of the elements A through U in Section III.

At a minimum, the INSTITUTIONAL CONTROLS PLAN shall include:

1. Plans and schedule for implementation of institutional controls for the Site and for Union Road House 1 and 2, including but not limited to: plans presenting the process by which Grants of Environmental Restriction and Easement will be recorded in the appropriate local land records office; plans for preparation of survey plans; title-related submittals; subordination agreements; evidence of authority; responsibility for recordation, etc.
2. Plans and schedule for compliance monitoring of implemented institutional controls by the Settling Defendants, including but not limited to: schedule for inspections; protocol for interviews to be performed as part of the inspections (e.g. types of information to be discussed during interview); inspection checklist; list of evidence to be gathered during inspections; inspection reporting; and the identity of the person who will be performing compliance monitoring and reporting.
3. Plans to perform additional remedial measures (e.g. install vapor barriers) in order to address vapor intrusion issues, if found at Union Road House 1 or 2 or as may be needed if construction of structures is planned at the Site.
4. Upon request by EPA, this plan shall present the process by which other forms of institutional controls are implemented along with or in place of Grants of Environmental Restriction and Easement.

At a minimum, the restrictions will prohibit the following activities:

1. Prohibit residential, agricultural or other uses of the Site that may present an unacceptable risk to human health.

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2. Prohibit construction of any structures at the Site, unless a study is conducted to determine if vapor intrusion screening criteria are met and, as appropriate, unless construction is designed to prevent vapor intrusion.
3. Prohibit extraction of groundwater at the Site and at Union Road House 1 and 2 for consumption or any other purpose, except groundwater monitoring.
4. Prohibit excavation at the Site and at Union Road House 1 and 2 below the seasonally-high water table.
5. Otherwise impose such restrictions necessary to protect human health and the environment and maintain the integrity of the remedy.

Within ten (10) days of receipt of EPA approval or modification of the INSTITUTIONAL CONTROLS PLAN, the Settling Defendants shall implement the plan. Settling Defendants shall perform all components of the INSTITUTIONAL CONTROLS PLAN, with ongoing monitoring of the implemented institutional controls, continuing throughout the Remedial Design, Remedial Action and Operation and Maintenance phase.

D. 100% DESIGN SUBMISSION

Within 90 days of receiving EPA's approval or modification of the 30% REMEDIAL DESIGN from EPA, the Settling Defendants shall submit the 100% REMEDIAL DESIGN for review and approval. This design submittal shall address 100% of the total Remedial Design for each component of the Remedial Action including, but not limited to

1. the final design plans and specifications in reproducible format;
2. the final bid documents;
3. drawings on reproducible mylars;
- 4.. a Contingency Plan which shall address the on-site construction workers and the local affected population in the event of an accident or emergency;
5. a Constructability Review report which evaluates the suitability of the project and its components in relation to the Site;
6. a correlation of the design plans and specifications;
7. a detailed statement of how ARARs are met, and a statement of all assumptions and all drawings and specifications necessary to support the analysis of compliance with ARARS, including but not limited to 40

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C.F.R. Section 264.258 (RCRA closure requirements for hazardous waste piles).

VI. REMEDIAL ACTION

The Remedial Action activities required for the Shpack Landfill Superfund Site shall include, but are not limited to: (a) remedial action work plan and REVISED POP; (b) initiation of construction; (c) pre-construction conference; (d) meetings during construction; and (e) operation and maintenance plan, environmental monitoring plan and REVISED POP. The Settling Defendants shall submit to EPA and MA DEP the required deliverables as stated herein for each of these Remedial Action activities. Each deliverable shall be subject to review and approval or modification by EPA, after reasonable opportunity for review and comment by the Massachusetts Department of Environmental Protection, in accordance with Section XII of the Consent Decree, Submissions Requiring Agency Approval.

A. Remedial Action Work Plan and Revised POP

Within 180 days of receiving EPA's approval or modification of the 100% REMEDIAL DESIGN from EPA, the Settling Defendants shall submit to EPA for review and approval or modification, after reasonable opportunity for review and comment by Massachusetts Department of Environmental Protection, a REMEDIAL ACTION WORK PLAN and REVISED POP for implementing the Remedial Action and associated activities, consistent with the approved Remedial Design for the Site. The REMEDIAL ACTION WORK PLAN and REVISED POP shall contain, at a minimum:

1. a description of all activities necessary to implement all components of the Remedial Action, in accordance with the Remedial Design, the SOW, the Consent Decree and the ROD, including but not limited to the following:
 - a. award of project contracts, including all agreements with off-site treatment and/or disposal facilities;
 - b. contractor mobilization/Site preparation, including construction of necessary utility hookups;
 3. construction, shake-down, and start-up of the materials handling facilities; dewatering facilities; and other facilities needed to complete the Remedial Action; and
 4. demobilization of all facilities.
- 2 a detailed schedule for the completion of all activities identified in Section VI.A.1, including the required deliverables, and an identification of milestone events in the performance of the Remedial Action.

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- 3 a REVISED POP shall be prepared in support of all fieldwork to be conducted according to the REMEDIAL DESIGN WORK PLAN. This REVISED POP shall be prepared in accordance with Section V.A.1.a above.

B. Pre-construction Conference

Within 60 days of receiving EPA's approval or modification of the REMEDIAL ACTION WORK PLAN, the Settling Defendants shall hold a PRE-CONSTRUCTION CONFERENCE. The participants shall include all parties involved in the Remedial Action, including but not limited to the Settling Defendants and their representatives, EPA, and MA DEP.

C. Initiation of Construction

Within 10 days of receiving EPA's approval or modification of the REMEDIAL ACTION WORK PLAN AND REVISED POP, the Settling Defendants shall INITIATE ALL THE REMEDIAL ACTION ACTIVITIES specified in the schedule contained therein.

D. Meetings During Construction

During the construction period, the Settling Defendants and their construction contractor(s) shall meet monthly with EPA and Massachusetts Department of Environmental Protection regarding the progress and details of construction. If, during the construction of the Remedial Action for the Site, conditions warrant modifications of the design, construction, and/or schedules, the Settling Defendants may propose such design or construction or schedule modifications. Following approval by EPA, after reasonable opportunity for review and comment by Massachusetts Department of Environmental Protection, the Settling Defendants shall implement the design or construction modifications required.

E. Operation and Maintenance Plan and Revised POP

Within 60 days of the 75% construction complete date, the Settling Defendants shall submit to EPA for review and approval or modification, after reasonable opportunity for review and comment by the Massachusetts Department of Environmental Protection, 1) OPERATION AND MAINTENANCE PLAN to ensure the long-term, continued effectiveness of each component of the Remedial Action, 2) an ENVIRONMENTAL MONITORING WORK PLAN to ensure conformance with the Performance Standards, and 3) a REVISED POP. These plans shall include, at a minimum, the following:

1. Operation and Maintenance Plan
 - a. a description of normal operations and maintenance;

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- b. a description of potential operational problems;
- c. a description of routine process monitoring and analysis;
- d. a description of contingency operation and monitoring;
- e. an operational safety plan;
- f. a description of equipment;
- g. annual operation and maintenance budget;
- h. recordkeeping and reporting requirements;
- i. a well maintenance program including, at a minimum, the following:
 - 1) a provision for prompt and proper abandonment, as appropriate, of wells used during the Remedial Investigation / Feasibility Study (RI/FS) which are currently unusable or which become unusable during the Remedial Action activities;
 - 2) a provision for inspection, continued maintenance and repair, if necessary, of all wells used during the RI/FS and not abandoned;
 - 3) a provision for continued maintenance or abandonment of wells used during RI/FS and additional wells used during the Remedial Design, Remedial Action and Operation and Maintenance phases after completion of the Completion Monitoring Program.
- j. site closure and post-closure monitoring:
 - 1) a cost estimate for post-closure care consistent with 40 C.F.R. Part 264;
 - 2) establishment of a financial assurance mechanism for post-closure care consistent with 40 C.F.R. Part 264; and
 - 3) post-closure inspection schedule and provisions for implementing such activities consistent with 40 C.F.R. Part 264;

2. ENVIRONMENTAL MONITORING PLAN

The Settling Defendants shall submit an ENVIRONMENTAL MONITORING PLAN for EPA review and approval, after reasonable opportunity for review and comment by MADEP. The ENVIRONMENTAL MONITORING PLAN shall involve monitoring to demonstrate conformance and compliance with all Cleanup Levels and Other Performance Standards listed in Section IV of this SOW. At a minimum, this plan shall detail how the Settling Defendants will demonstrate that the Cleanup Levels and Other Performance Standards listed in Section IV of this SOW have or will be attained at the Site. This plan shall include at a minimum, the following:

- a. sampling locations;
- b. sampling frequency; and
- c. appropriate statistical modeling or other data interpretation techniques.

This plan shall be also incorporate the requirements of 40 C.F.R. 264.97, as necessary.

3. Revised POP

A REVISED POP shall be prepared in support of all fieldwork to be conducted according to the ENVIRONMENTAL MONITORING WORK PLAN. This REVISED POP shall be prepared in accordance with Section V.A.1.a above.

F. Final Construction Inspection

Within 60 days after Settling Defendants conclude that the construction has been fully (100% complete) performed, the Settling Defendants shall schedule and conduct a FINAL CONSTRUCTION INSPECTION. This inspection shall include participants from all parties involved in the Remedial Action, including but not limited to the Settling Defendants and their contractors, EPA and MA DEP.

G. Final Remedial Construction Report

Upon completion of construction of the Remedial Action, the Settling Defendants shall submit FINAL REMEDIAL CONSTRUCTION REPORTS for 1) soil and 2) sediments (entitled "Close-Out Reports") to EPA for approval or modification, after reasonable opportunity for review and comment by Massachusetts Department of Environmental Protection. Each Close-Out Report shall include, at a minimum, the following documentation:

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1. a summary of all procedures actually used to excavate the contaminated soil and sediments, dispose of the materials excavated, restoration of wetlands, residue handling and disposal, installation of public water supply to two residents on Union Road, and monitor the air quality during all on-site activities.
2. tabulation of all analytical data and field notes prepared during the course of the Remedial Design and Remedial Action activities including, but not limited to: horizontal and vertical perimeter locations to confirm the removal of all contaminated soil/sediment materials, air monitoring data and types of monitoring devices used to confirm air quality standards were maintained during all on-site treatment processes, and any other analytical data collected during the Remedial Design and Remedial Action activities (full copies of all results and notes shall be available and produced for EPA and Massachusetts Department of Environmental Protection upon request).
 - a. QA/QC documentation of these results;
 - b. presentation of these results in appropriate figures;
 - c. a description, with appropriate photographs, maps and tables of the disposition of the Site (including areas and volumes of soil and sediment placement and disturbance);
 - d. final, detailed cost breakdowns for each of the treatment process components;
 - e. conclusions regarding conformance of treatment processes with the Performance Standards; and
 - f. descriptions of actions taken and a schedule of any potential future actions to be taken to implement O&M at the Site.

H. Demonstration of Compliance Report

At the completion of the period necessary to demonstrate compliance with the Performance Standards, the Settling Defendants shall submit to EPA for review and approval a DEMONSTRATION OF COMPLIANCE REPORT. The DEMONSTRATION OF COMPLIANCE REPORT shall contain all information necessary to demonstrate compliance with Performance Standards. The DEMONSTRATION OF COMPLIANCE REPORT shall also contain all approved deliverables under this SOW including, but not limited to the INSTITUTIONAL CONTROL PLAN, as approved.

EPA shall review the DEMONSTRATION OF COMPLIANCE REPORT. If EPA, after reasonable opportunity for review and comment by the Massachusetts

Department of Environmental Protection, determines that the Performance Standards have not been achieved, EPA will notify the Settling Defendants of its disapproval of the DEMONSTRATION OF COMPLIANCE REPORT and the activities that must be undertaken by the Settling Defendants.

If EPA concludes, based on the initial or any subsequent DEMONSTRATION OF COMPLIANCE REPORT, and after reasonable opportunity for review and comment by the Massachusetts Department of Environmental Protection, that all Performance Standards have been achieved, EPA will issue its approval of such report.

I. Operation and Maintenance

Within 30 days of receiving EPA's approval or modification of the Settling Defendants' final remedial construction reports for each component of the Remedial Action, the Settling Defendants shall implement all operation and maintenance activities in accordance with the terms and schedules set forth in the OPERATION AND MAINTENANCE PLAN approved by EPA. (Along with and as part of the performance of the OPERATION AND MAINTENANCE PLAN, Settling Defendants shall continue to perform all activities required by the approved INSTITUTIONAL CONTROLS PLAN and all continuing monitoring and reporting activities required by the approved ENVIRONMENTAL MONITORING WORK PLAN.)

J. Five-Year Review Reports

Five years after the initiation of construction on the Remedial Action (see Section VI.C), and every five years thereafter, the Settling Defendants shall conduct a five-year review for the Site, and submit a FIVE-YEAR REVIEW REPORT, for EPA approval or modification, after reasonable opportunity to review and comment by MA DEP. These reports shall be prepared in accordance with EPA's Comprehensive Five-Year Review Guidance (OSWER 9355.7-03B-P), dated June 2001, as amended or superseded.

VII. SUBMISSIONS REQUIRING AGENCY APPROVAL

- A. All plans, deliverables and reports identified in the SOW for submittal to EPA and the Massachusetts Department of Environmental Protection shall be delivered to EPA and Massachusetts Department of Environmental Protection in accordance with the Consent Decree and this SOW.**
- B. Any plan, deliverable, or report submitted to EPA and Massachusetts Department of Environmental Protection for approval shall be printed using two-sided printing and marked "Draft" on each page and shall include, in a prominent location in the document, the following disclaimer: "Disclaimer: This document is a DRAFT document prepared by the Settling Defendants under a government Consent Decree."**

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This document has not undergone formal review by the EPA and Massachusetts Department of Environmental Protection. The opinions, findings, and conclusions, expressed are those of the author and not those of the U.S. Environmental Protection Agency or Massachusetts Department of Environmental Protection."

- C. Approval of a plan, deliverable or report does not constitute approval of any model or assumption used by the Settling Defendants in such plan, deliverable or report.

ATTACHMENT A

PROJECT OPERATIONS PLAN

Before any field activities commence on the Site, Settling Defendants shall submit several site-specific plans to establish procedures to be followed by the Settling Defendants in performing field, laboratory, and analysis work and community and agency liaison activities. These site-specific plans include the:

- A. Site Management Plan (SMP),
- B. Sampling and Analysis Plan (SAP),
- C. Health and Safety Plan (HSP), and
- D. Community Relations Support Plan (CRSP).

These plans shall be combined to form the Site Project Operations Plan (POP). The four components of the POP are described in A. through D. herein.

The format and scope of each Plan shall be modified as needed to describe the sampling, analyses, and other activities that are clarified as the RD/RA progresses. EPA may modify the scopes of these activities at any time during the RD/RA at the discretion of EPA in response to the evaluation of RD/RA results, changes in RD/RA requirements, and other developments or circumstances.

A. Site Management Plan (SMP)

The Site Management Plan (SMP) shall describe how the Settling Defendants will manage the project to complete the Work required at the Site. As part of the plan the Settling Defendants shall perform the following tasks:

1. Provide a map and a list of properties, the property owners, and addresses of owners to whose property access may be required.
2. Clearly indicate the exclusion zone, contamination reduction zone, and clean area for on-site activities.
3. Establish necessary procedures and provide sample letters to land owners to arrange field activities and to ensure EPA and Massachusetts Department of Environmental Protection are informed of access-related problems and issues.
4. Provide for the security of government and private property on the Site.
5. Prevent unauthorized entry to the Site, which might result in exposure of persons to potentially hazardous conditions.
6. Secure access agreements for the Site;

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7. Establish the location of a field office for on-site activities.
8. Provide contingency and notification plans for potentially dangerous activities associated with the RD/RA.
9. Monitor airborne contaminants released by Site activities which may affect the local populations.

The overall objective of the Site Management Plan is to provide EPA and the Massachusetts Department of Environmental Protection with a written understanding and commitment of how various project aspects such as access, security, contingency procedures, management responsibilities, waste disposal, budgeting, and data handling are being managed by the Settling Defendants. Specific objectives and provisions of the Site Management Plan shall include, but are not limited to the following:

1. Communicate to EPA, Massachusetts Department of Environmental Protection, and the public the organization and management of the RD/RA, including key personnel and their responsibilities.
2. Provide a list of contractors and subcontractors of the Settling Defendants in the RD/RA and description of their activities and roles.
3. Provide regular financial reports of the Settling Defendants' expenditures on the RD/RA activities.
4. Provide for the proper disposal of materials used and wastes generated during the RD/RA (e.g., drill cutting, extracted ground water, protective clothing, disposable equipment). These provisions shall be consistent with the off-site disposal aspects of SARA, RCRA, and applicable state laws. The Settling Defendants, or their authorized representative, or another party acceptable to EPA and Massachusetts Department of Environmental Protection shall be identified as the generator of wastes for the purpose of regulatory or policy compliance.
5. Provide plans and procedures for organizing, manipulating, and presenting the data generated and for verifying its quality before and during the RD/RA.

The last item shall include a description of the computer database management systems that are compatible with hardware available to EPA Region I personnel for handling media-specific sampling results obtained before and during the RD/RA. The description shall include data input fields, examples of data base management output from the coding of all RD/RA sample data, appropriate quality assurance/quality control to ensure accuracy, and capabilities of data manipulation. To the degree possible, the data base management parameters shall be compatible with the EPA Region I data storage and analysis system.

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B. Sampling and Analysis Plan (SAP)

The SAP shall be consistent with Section IX of the Consent Decree, Quality Assurance, Sampling, and Data Analysis of the CD. The SAP consists of both (1) a Quality Assurance Project Plan (QAPP) that describes the policy, organization, functional activities, and the quality assurance and quality control protocols necessary to achieve the data quality objectives dictated by the intended use of the data; and (2) the Field Sampling Plan (FSP) that provides guidance for all fieldwork by defining in detail the sampling and data-gathering methods to be used on a project. Components required by these two plans are described below.

The first SAP shall be the framework of all anticipated field activities (e.g., sampling objectives, evaluation of existing data, standard operating procedures) and contain specific information on the initial field work (e.g., sampling locations and rationale, sample numbers and rationale, analyses of samples). During the RD/RA, the SAP shall be revised as necessary to cover each round of field or laboratory activities. The purpose of the SAP is to ensure that sampling data collection activities will be comparable to and compatible with previous data collection activities performed at the Site while providing a mechanism for planning and approving field activities. The overall objectives of the two documents comprising the SAP are as follows:

1. to document specific objectives, procedures, and rationales for fieldwork and sample analytical work;
2. to provide a mechanism for planning and approving Site and laboratory activities;
3. to ensure that sampling and analysis activities are necessary and sufficient; and
4. to provide a common point of reference for all Settling Defendants to ensure the comparability and compatibility of all objectives and the sampling and analysis activities.

To achieve this last objective, the SAP shall document all field and sampling and analysis objectives as noted above, as well as all data quality objectives and specific procedures/protocols for field sampling and analysis.

The following critical elements of the SAP shall be described for each sample medium (e.g., ground water, surface water, soil, sediment, air, and biota) and for each sampling event:

1. sampling objectives {There can be many objectives for example engineering related (well yields, zone of influence, performance monitoring, demonstration of attainment, five year review, etc.)};
2. data quality objectives, including data uses and the rationale for the selection of analytical levels and detection limits (see Guidance for the Data Quality Objectives Process, EPA QA/G-4 (EPA/600/r-96/055, September 1994); Draft Data Quality Objectives Decision Errors

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Feasibility Trials (DEFT) Software EPA/600/R-96/056, September 1994); and Final Guidance Data Usability in Risk Assessment (Part A) (publication 9285.7-09A, April 1992, PB92-963356); Guidance for Data Usability in Risk Assessment (Part B). (publication 9285.7-09B, May 1992, PB92-963362)

3. site background update, including an evaluation of the validity, sufficiency, and sensitivity of existing data;
4. sampling locations and rationale;
5. sampling procedures and rationale and references;
6. numbers of samples and justification;
7. numbers of field blanks, trip blanks, and duplicates;
8. sample media (e.g., ground water, surface water, soil, sediment, air, and buildings, facilities, and structures, including surfaces, structural materials, and residues);
9. sample equipment, containers, minimum sample quantities, sample preservation techniques, maximum holding times;
10. instrumentation and procedures for the calibration and use of portable air, soil-, or water-monitoring equipment to be used in the field;
11. chemical and physical parameters in the analysis of each sample;
12. chain-of-custody procedures must be clearly stated (see EPA NEIC Policies and Procedures Manual, EPA 330/9-78 001-R) May 1978, revised May 1986;
13. procedures to eliminate cross-contamination of samples (such as dedicated equipment);
14. sample types, including collection methods and if field and laboratory analyses will be conducted;
15. laboratory analytical procedures, equipment, and detection limits;
16. equipment decontamination procedures;
17. consistency with the other parts of the Work Plan(s) by having identical objectives, procedures, and justification, or by cross-reference;
18. analysis from each medium for all Hazardous Substance List (HSL) inorganic and organic analytes;
19. analysis for other potential site-specific contaminants not on the HSL in each media;

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20. analysis of selected background and contaminated ground water samples for substances listed in RCRA Appendix IX, unless the exclusion of certain substances on this list is approved by EPA; and

21. for any limited field investigation (field screening technique), provisions for the collection and laboratory analysis of parallel samples and for the quantitative correlation analysis in which screening results are compared with laboratory results.

The SAP must be the framework of all anticipated field activities (e.g., sampling objectives, evaluation of existing data, standard operating procedures) and contain specific information on each round of field sampling and analysis work (e.g., sampling locations and rationale, sample numbers and rationale, analyses of samples). During the RD/RA, the SAP shall be revised as necessary to cover each round of field or laboratory activities. Revisions or a statement regarding the need for revisions shall be included in each deliverable describing all new field work.

The SAP shall allow for notifying EPA, at a minimum, three weeks before field sampling or monitoring activities commence. The SAP shall also allow split, replicate, or duplicate samples to be taken by EPA (or their contractor personnel) and by other Settling Defendants approved by EPA. At the request of EPA the Settling Defendants shall provide these samples in appropriately pre-cleaned containers to the government representatives. Identical procedures shall be used to collect the Settling Defendants and the parallel split samples unless otherwise specified by EPA. Several references shall be used to develop the SAP, for example:

1. Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (OSWER Directive 9355.3-01, EPA/540/G-89/004, October 1988);
2. Test Methods for Evaluating Solid Waste, Physical/Chemical Method (EPA Pub. SW-846, Third Edition, most recent update);
3. EPA Requirements for Quality Assurance Plans, EPA QA/R-5 (EPA/240/B-01/003) March 2001
4. EPA New England Quality Assurance Project Plan Program Guidance, April 2005
5. Guidance for the Data Quality Objectives Process, QA/G-4 (EPA/600/R-96/055) August 2000.;
6. Data Quality Objectives Decision Errors Feasability Trials (DEFT) Software, QA/G-4D (EPA/240/B-01/007) September 2001
7. Guidance for the Data Quality Objectives Process for Hazardous Waste, QA/G-4HW (EPA/600/R-00/007) January 2000
8. Guidance for Preparing Standard Operating Procedures(SOPs) EPA QA/G-6 (EPA/240/B-01/004) March 2001

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9. Region I, EPA-New England Data Validation Functional Guidelines for Evaluating Environmental Analyses, Revised December 1996
10. Guidance for Data Quality Assessment: Practical Methods for Data Analysis, QA/G-9 (QA00 Version, EPA/600/R-96/084) July 2000
11. EPA Requirements for Quality Management Plans, QA/R-2 (EPA 240/B-01/002) March 2001.
12. Guidance for Quality Assurance Project Plans, QA/G-5 (EPA/240/R-02/009) December 2002

EPA Headquarters (HQs) Quality Assurance Requirements and Guidance can be found at: www.epa.gov/quality/qa_docs.html and EPA Regional Quality Assurance Guidance and information can be found at: <http://epa.gov/ne/lab/qa/qualsys.html>

B.1 QUALITY ASSURANCE PROJECT PLAN (QAPP)

The Quality Assurance Project Plan (QAPP) shall document in writing the site-specific objectives, policies, organizations, functional activities, sampling and analysis activities and specific quality assurance/quality control activities designed to achieve the data quality objectives (DQOs) of the RD/RA. The QAPP developed for this project shall document quality control and quality assurance policies, procedures, routines, and specifications.

Project activities throughout the RD/RA shall comply with the QAPP. QAPP sampling and analysis objectives and procedures shall be consistent with EPA Requirements QAPP for Environmental Data Operations (EPA QA/R-5) and appropriate EPA handbooks, manuals, and guidelines including: , EPA New England Quality Assurance Project Plan Program Guidance, April 2005, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (EPA Pub. SW-846, Third Edition, latest update) (CLP Routine Analytical Services, RAS, latest Statement of Work should be used), Guidelines Establishing Test Procedures for the Analysis of Pollutants (40 CFR, Part 136), and Compendium of Methods for the Determination of Toxic Organic Compounds in Ambient Air, (EPA-600/4-84-041 April 1984).

All the QAPP elements identified in EPA QA/R-5 and the EPA New England Quality Assurance Project Plan Program Guidance, April 2005 must be addressed.

As indicated in EPA QA/R-5 and the EPA New England Quality Assurance Project Plan Program Guidance, April 2005, a list of essential elements must be considered in the QAPP for the RD/RA. If a particular element is not relevant to a project and therefore excluded from the QAPP, specific and detailed reasons for exclusion must be provided.

Information in a plan other than the QAPP may be cross-referenced clearly in the QAPP provided that all objectives, procedures, and rationales in the documents are consistent, and the reference material fulfills requirements of EPA/QA/R-5. Examples of how this cross reference might be accomplished can be found in the Guidance for the Data Quality Objectives Process (EPA/600/R-96/055) and the

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Data Quality Objectives decision Errors Feasability Trials(DEFT) Software QA/G-4D (EPA/240/B-01/007) September 2001. EPA-approved references, or equivalent, or alternative methods approved by EPA shall be used, and their corresponding EPA-approved guidelines should be applied when they are available and applicable.

Laboratory QA/AC Procedures

The QA/QC procedures and SOPs for any laboratory (both fixed and mobile) used during the RD/RA shall be included in the Settling Defendants QAPP. When this work is performed by a contractor to a private party, each laboratory performing chemical analyses shall meet the following requirements:

- 1) be approved by the State Laboratory Evaluation Program, if available;
- 2) have successful performance in one of EPA's National Proficiency Sample Programs (i.e., Water Supply or Water Pollution Studies or the State's proficiency sampling program);
- 3) be familiar with the requirements of 48 CFR Part 1546 contract requirements for quality assurance; and
- 4) have a QAPP for the laboratory including all relevant analysis. This plan shall be referenced as part of the contractor's QAPP.

Data Validation Procedures

The Settling Defendants are required to certify that a representative portion of the data has been validated by a person independent of the laboratory according to the Region I, EPA-New England Data Validation Functional Guidelines for Evaluating Environmental Analyses Revised December 1996 (amended as necessary to account for the differences between the approved analytical methods for the project and the current Contract Laboratory Program Statements of Work(CLP SOW). A data validation reporting package as described in the guidelines cited above must be delivered at the request of the EPA project manager. Approved validation methods shall be contained in the QAPP.

The independent validator shall not be the laboratory conducting the analysis and should be a person with a working knowledge of or prior experience with EPA data validation procedures. The independent validator shall certify that the data has been validated, discrepancies have been resolved if possible, and the appropriate qualifiers have been provided.

Data Package requirements:

The Settling Defendants must require and keep the complete data package and make it available to EPA and the Massachusetts Department of Environmental Protection on request in order for EPA and the Massachusetts Department of Environmental Protection to conduct an independent validation of the data. The complete data package shall consist of all results, the raw data, and all relevant QA/QC information. The forms contained in the data validation functional guidelines must be utilized to report the data when applicable. Raw data includes the associated chromatograms and the instrument printouts with area and height peak results. The peaks in all standards and samples must be labeled. The concentration of all standards analyzed with the amount injected must be

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included. All laboratory tracking information must also be included in the data package. An example data package deliverable is listed below:

- 1) a summary of positive results and detection limits of non-detects with all raw data;
- 2) tabulate surrogate recoveries and QC limits from methods 3500 and 8000 in SW-846 and all validation and sample raw data;
- 3) tabulated matrix spike/matrix spike duplicate recoveries, relative percent differences, spike concentrations, and QC limits from methods 3500 and 8000 in SW-846 and all validation and sample raw data;
- 4) associated blanks (trip, equipment, and method with accompanying raw data for tests);
- 5) tabulated initial and continuing calibration results (concentrations, calibration factors or relative response factors and mean relative response factors, % differences and % relative standard deviations) with accompanying raw data;
- 6) tabulated retention time windows for each column;
- 7) a record of the daily analytical scheme (run logbook, instrument logbook) which includes samples and standards order of analysis;
- 8) the chain of custody for the sample shipment groups, *DAS packing slip*, *DAS analytical specifications*; refer to: EPA NEIC Policies and Procedures Manual, (EPA 330/9-78 001-R) May 1978, revised May 1986 (for chain-of-custody procedures.);
- 9) a narrative summary of method and any problems encounter during extraction or analysis;
- 10) tabulated sample weights, volumes, and % solids used in each sample calculation;
- 11) example calculation for positive values and detection limits; and
- 12) SW-846 method 3500 and 8000 validation data for all tests.

The forms contained in Chapter 1 of SW-846 (Second Edition 1982 as amended by Update I, April 1984, and Update II, April 1985) or the current CLP SOW forms must be utilized to report the data when applicable. Raw data includes the associated chromatograms and the instrument printouts with area and height peak results. The peaks in all standards and samples must be labeled. The concentration of all standards analyzed with the amount injected must be included. *All internal and external laboratory sample tracking information must be included in the data package.*

B.2 Field Sampling Plan (FSP)

The objective of the Field Sampling Plan is to provide EPA and all parties involved with the collection and use of field data with a common written understanding of all field work. The FSP should be written so that a field sampling team unfamiliar with the Site would be able to gather the samples and field information required. Guidance for the selection of field methods, sampling procedures, and custody can be acquired from the Compendium of Superfund Field Operations Methods (OSWER Directive 9355.0-14, EPA/540/P-87/001), December 1987, which is a compilation of demonstrated field techniques that have been used during remedial response activities at hazardous waste sites. The FSP shall be site-specific and shall include the following elements:

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1. Site Background. If the analysis of the existing Site details is not included in the Work Plan or in the QAPP, it must be included in the FSP. This analysis shall include a description of the Site and surrounding areas and a discussion of known and suspected contaminant sources, probable transport pathways, and other information about the Site. The analysis shall also include descriptions of specific data gaps and ways in which sampling is designed to fill those gaps. Including this discussion in the FSP will help orient the sampling team in the field.
2. Sampling Objectives. Specific objectives of sampling effort that describe the intended uses of data must be clearly and succinctly stated.
3. Sampling Location and Frequency. This section of the FSP identifies each matrix to be collected and the constituents to be analyzed. Tables shall be used to clearly identify the number of samples, the type of sample (water, soil, etc.), and the number of quality control samples (duplicates, trip blanks, equipment blanks, etc.). Figures shall be included to show the locations of existing or proposed sample points.
4. Sample Designation. A sample numbering system shall be established for the project. The sample designation should include the sample or well number, the sample round, the sample matrix (e.g., surface soil, ground water, soil boring), and the name of the Site.
5. Sampling Equipment and Procedures. Sampling procedures must be clearly written. Step-by-step instructions for each type of sampling that are necessary to enable the field team to gather data that will meet the Data Quality Objectives (DQOs). A list should include the equipment to be used and the material composition (e.g., Teflon, stainless steel) of equipment along with decontamination procedures.
6. Sampling Handling and Analysis. A table shall be included that identifies sample preservation methods, types of sampling jars, shipping requirements, and holding times. Examples of paperwork such as traffic reports, chain-of-custody forms, packing slips, and sample tags filled out for each sample as well as instructions for filling out the paperwork must be included. Field documentation methods including field notebooks and photographs shall be described.

C. Health and Safety Plan (HSP)

The objective of the site-specific Health and Safety Plan is to establish the procedures, personnel responsibilities and training necessary to protect the health and safety of all on-site personnel during the RD/RA. The plan shall provide procedures and plans for routine but hazardous field activities and for unexpected Site emergencies.

The site-specific health and safety requirements and procedures in the HSP shall be updated based on an ongoing assessment of Site conditions, including the most current information on each medium. For each field task during the RD/RA, the HSP shall identify:

1. possible problems and hazards and their solutions;

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2. environmental surveillance measures;
3. specifications for protective clothing;
4. the appropriate level of respiratory protection;
5. the rationale for selecting that level; and
6. criteria, procedures, and mechanisms for upgrading the level of protection and for suspending activity, if necessary.

The HSP shall also include the delineation of exclusion zones on a map and in the field. The HSP shall describe the on-site person responsible for implementing the HSP for the Settling Defendants representatives at the Site, protective equipment personnel decontamination procedures, and medical surveillance. The following documents and resources shall be consulted:

1. OSHA e-HASP Software – Version 1.0, September 2003 (www.osha.gov/dep/etools/ehasp/index.html)
2. Hazardous Waste Operations and Emergency Response (Department of Labor, Occupational Safety and Health Administration, (OSHA) 29 CFR Part 1910.120); and
3. Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities: Appendix B (NIOSH/OSHA/EPA 1986).

OSHA regulations at 40 CFR 1910, which describe the routine emergency provisions of a site-specific health and safety plan, and the OSHA e-HASP Software, shall be the primary references used by the Settling Defendants in developing and implementing the Health and Safety Plan.

The measures in the HSP shall be developed and implemented to ensure compliance with all applicable state and Federal occupational health and safety regulations. The HSP shall be updated at the request of EPA during the course of the RD/RA and as necessary.

D. Community Relations Support Plan (CRSP)

EPA shall develop a revised Community Relations Plan (CRP) to describe public information and public involvement activities anticipated during the RD/RA and delisting. The Settling Defendants shall develop a Community Relations Support Plan, whose objective is to ensure and specify adequate

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support from the Settling Defendants for the community relations efforts of EPA. This support shall be at the request of EPA and may include:

1. participation in public informational or technical meetings, including the provision of presentations, logistical support, visual aids and equipment;
2. publication and copying of fact sheets or updates; and
3. assistance in preparing a responsiveness summary after the public RD/RA comment period;
4. assistance in placing EPA public notices in print.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

_____, INC.,

Defendants.

CIVIL ACTION NO. _____

CONSENT DECREE
REGARDING SHPACK LANDFILL SUPERFUND SITE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice, on behalf of EPA, for response actions at the Shpack Landfill Superfund Site in Norton and Attleboro, Massachusetts, together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth of Massachusetts (the "Commonwealth") on June 2, 2005, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the Commonwealth with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Federal natural resource trustees on May 23, 2005, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

E. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaints, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. The Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the Settling Defendants.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 10, 1986, 51 Fed. Reg. 21054.

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, some of the Settling Defendants commenced on September 10, 1990, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

H. Some of the Settling Defendants completed a Remedial Investigation/Feasibility Study ("RI/FS") in June 2004.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the RI/FS and of the proposed plan for remedial action on June 18, 2004, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of

the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 30, 2004, on which the Commonwealth has given its concurrence. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

K. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

L. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

M. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

“Commonwealth” shall mean the Commonwealth of Massachusetts.

“Consent Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall be the effective date of this Consent Decree as provided in Paragraph 112 [Effective Date].

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“MADEP” shall mean the Massachusetts Department of Environmental Protection and any successor departments or agencies of the Commonwealth.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 91 [Work Takeover] of Section XXI. Future Response

Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Settling Defendants have agreed to reimburse under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from June 30, 2006 to the Effective Date. Future Response Costs shall not include costs incurred by the United States pursuant to the Formerly Utilized Sites Remedial Action Program and related to the Site. However, Future Response Costs shall include costs incurred by EPA and its representatives (including contractors) in coordinating with the United States Army Corps of Engineers with respect to its activities pursuant to the Formerly Utilized Sites Remedial Action Program and related to the Site.

“Interim Response Costs” shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between June 30, 2006 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date. Interim Response Costs shall not include costs incurred by the United States pursuant to the Formerly Utilized Sites Remedial Action Program and related to the Site. However, Future Response Costs shall include costs incurred by EPA and its representatives (including contractors) in coordinating with the United States Army Corps of Engineers with respect to its activities pursuant to the Formerly Utilized Sites Remedial Action Program and related to the Site.

“Interest,” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“Municipal solid waste” shall mean waste material: (i) generated by a household (including a single or multifamily residence); or (ii) generated by a commercial, industrial or institutional entity, to the extent that the waste material - (I) is essentially the same as waste normally generated by a household; (II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (III) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Operation and Maintenance” or “O & M” shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

“Owner Settling Defendants” shall mean the Settling Defendants listed in Appendix E.

“Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

“Parties” shall mean the United States and the Settling Defendants.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through June 30, 2006, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date. Past Response Costs shall not include costs incurred by the United States pursuant to the Formerly Utilized Sites Remedial Action Program and related to the Site.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section L of the ROD and Section IV. of the SOW.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site signed on September 30, 2004, by the Regional Administrator, EPA Region 1, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix A.

“Remedial Action” shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

“Remedial Action Work Plan” shall mean the document developed pursuant to Paragraph 13 [Remedial Action] of this Consent Decree and approved by EPA, and any amendments thereto.

“Remedial Design” shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

“Remedial Design Work Plan” shall mean the document developed pursuant to Paragraph 12 [Remedial Design] of this Consent Decree and approved by EPA, and any amendments thereto.

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendants” shall mean those Parties identified in Appendices D (Non-Owner Settling Defendants) and E (Owner Settling Defendants).

“Settling Federal Agencies” shall mean those departments, agencies, and instrumentalities of the United States identified in Appendix F, which are resolving any claims which have been or could be asserted against them with regard to this Site as provided in this Consent Decree.

“Site” shall mean the Shpack Landfill Superfund Site, encompassing approximately 9.4 acres, located on the Norton-Attleboro, MA town boundary, on the southerly side of Union Road in Norton, MA and on the southerly side of Peckham Street in Attleboro, MA, and depicted generally on the map attached as Appendix C.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

“Supervising Contractor” shall mean the principal contractor retained by the Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

“United States” shall mean the United States of America, including without limitation EPA, the Settling Federal Agencies, any federal natural resources trustee and all of the other departments, agencies, and instrumentalities of the United States.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any “hazardous material” or “oil” under the Massachusetts Oil and Hazardous Release Prevention and Response Act, Mass. Gen. L. ch. 21E § 2; and (5) any “hazardous waste” under Mass. Gen. L. ch. 21C § 2. “Work” shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. **Objectives of the Parties.** The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendants, to reimburse response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendants and the claims of the Settling Defendants which have been or could have been asserted against the United States with regard to this Site as provided in this Consent Decree.

6. **Commitments by Settling Defendants and Settling Federal Agencies.**

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree. The Settling Federal Agencies shall reimburse the EPA Hazardous Substance Superfund for Past Response Costs and Future Response Costs, as provided in this Consent Decree.

b. The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

7. **Compliance With Applicable Law.** All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state

environmental laws as set forth in the ROD and the SOW ("ARARs"). The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice to Successors-in-Title.

a. At least 30 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner Settling Defendant(s) conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, the Owner Settling Defendant(s) conveying the interest shall also give written notice to EPA and the Commonwealth of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

b. In the event of any such conveyance, the Owner Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Owner Settling Defendant(s). In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Defendant(s) to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

10. The Settling Defendants shall perform the Work for the Site as described in this Consent Decree; in the ROD attached as Appendix A; in the SOW (which the Parties agree is consistent with the ROD) attached as Appendix B; and any modifications thereto. The ROD, the

SOW, and all modifications to the SOW, are hereby incorporated by reference and made a part of this Decree. The Work shall be performed in accordance with all the provisions of this Decree, the SOW, any modifications to the SOW, and all design specifications or other plans or schedules attached to or approved pursuant to the SOW.

11. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA, after a reasonable opportunity for review and comment by the Commonwealth. Within 10 days after the lodging of this Consent Decree, Settling Defendants shall notify EPA and the Commonwealth in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and the Commonwealth and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the Commonwealth, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA and the Commonwealth a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA and the Commonwealth of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

12. Remedial Design.

a. Consistent with the deadlines provided in the SOW, Settling Defendants shall submit to EPA and the Commonwealth the deliverables required as part of the Remedial

Design, as set forth in Section V of the SOW, including, but not limited to, a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. Consistent with the deadlines provided in the SOW, the Settling Defendants shall submit to EPA and the Commonwealth a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the Commonwealth, and submittal of the Health and Safety Plan for all field activities to EPA and the Commonwealth, Settling Defendants shall implement the Remedial Design Work Plan. The Settling Defendants shall submit to EPA and the Commonwealth all plans, submittals and other deliverables required under the approved Remedial Design Work Plan, in accordance with the approved schedule, for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan. Upon approval by EPA of the other Remedial Design deliverables required under the SOW, Settling Defendants shall implement the activities required by such deliverables.

13. Remedial Action.

a. Consistent with the deadlines provided in the SOW, Settling Defendants shall submit to EPA and the Commonwealth the deliverables required as part of the Remedial Design, as set forth in Section VI. of the SOW, including, but not limited to, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Settling Defendants shall submit to EPA and the Commonwealth a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120. The Settling Defendants shall submit to EPA for approval all other Remedial Action plans, submittals and deliverables described in the SOW, in accordance with the schedule set forth in the SOW and the approved Remedial Action Work Plan.

b. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the Commonwealth, Settling Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Defendants shall submit to EPA and the Commonwealth all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and

Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan. Upon approval by EPA of the other Remedial Action deliverables required under the SOW, Settling Defendants shall implement the activities required by such deliverables.

14. The Settling Defendants shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

15. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 15 [Modification of SOW] and Paragraph 53 [Certification of Completion] only, the "scope of the remedy selected in the ROD" shall mean the actions described in Section L of the ROD, including, but not limited to, the following: (1) excavation and off-site disposal at an appropriate disposal facility of soil and sediment exceeding Performance Standards (and excluding contamination addressed by the United States Army Corps of Engineers pursuant to the Formerly Utilized Sites Remedial Action Program); (2) placement of clean fill in open areas to backfill to grade and/or wetlands restoration/replication, as appropriate; (3) connecting two residences to public water; (4) implementation of institutional controls; and (5) implementation of surface water, sediment and groundwater monitoring.

c. If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 73 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

16. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

17. a. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall

not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

(1) The Settling Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(2) The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 17a. [Off-Site Shipment] as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Settling Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440. Settling Defendants shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

VII. REMEDY REVIEW

18. **Periodic Review.** Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

19. **EPA Selection of Further Response Actions.** If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

20. **Opportunity To Comment.** Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

21. **Settling Defendants' Obligation To Perform Further Response Actions.** If EPA selects further response actions for the Site, the Settling Defendants shall undertake such further response actions. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute EPA's selection of further response actions. Disputes pertaining to EPA's selection of further response actions shall be resolved pursuant to Paragraph 73 (record review).

22. Submissions of Plans. If Settling Defendants are required to perform the further response actions pursuant to Paragraph 21, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

23. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with "EPA Requirements for Quality Assurance Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009) December 2002), "EPA New England Quality Assurance Project Plan Program Guidance", April 2005, and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any sampling or monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the Commonwealth, a Sampling and Analysis Plan ("SAP"), which includes, among other things, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA and Commonwealth personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Organic Analysis" (Multi-Media, Multi-Concentration Organics Analysis, SOMO1.1, which can be found at <http://www.epa.gov/superfund/programs/clp/som1.htm>) and the "Contract Lab Program Statement of Work for Inorganic Analysis," (Multi-Media, Multi-Concentration Inorganics Analysis, ILM05.3, which can be found at <http://www.epa.gov/superfund/programs/clp/ilm5.htm>), and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the Commonwealth, the Settling Defendants may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall only use laboratories that have a documented Quality System which complies with ANSI/ASQ E4-2004, "Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use," and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Defendants shall ensure that all field methodologies utilized in collecting

samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

24. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA and the Commonwealth or their authorized representatives. Settling Defendants shall notify EPA and the Commonwealth not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the Commonwealth shall have the right to take any additional samples that EPA or the Commonwealth deem necessary. Upon request, EPA shall allow the Settling Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendants' implementation of the Work.

25. Settling Defendants shall submit to EPA and the Commonwealth two copies (and one electronic copy) of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

26. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

27. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States, the Commonwealth, and their representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the Commonwealth;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 91 [Work Takeover] of this Consent Decree;

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (*Access to Information*);

(9) Assessing Settling Defendants' compliance with this Consent Decree; and

(10) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to, (1) residential, agricultural or other uses of the Site that may present an unacceptable risk to human health shall be prohibited; (2) extraction of groundwater at the Site and at Union Road House 1 and 2 (as defined in the SOW) for consumption or any other purpose, except groundwater monitoring, shall be prohibited; (3) excavation at the Site and at the Union Road House 1 and 2 below the seasonally-high water table shall be prohibited; (4) construction of any structures at the Site shall be prohibited, unless a study is conducted to determine if vapor intrusion screening criteria are met and, as appropriate, unless construction is designed to prevent vapor intrusion; and (5) any activity that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial action shall be prohibited.

c. execute and record in the Registry of Deeds of Bristol County, Commonwealth of Massachusetts, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 27.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 27.b of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the Commonwealth and its representatives, (iii) the other Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Such Settling Defendants shall, within 45 days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix G, that is enforceable under the laws of the Commonwealth of Massachusetts, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

(2) a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (2001) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Registry of Deeds or other appropriate office of Bristol County. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

28. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Settling Defendants shall use best efforts to secure from such persons an agreement to provide access thereto for Settling Defendants, as well as for the United States on behalf of EPA, and the Commonwealth, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 27.a of this Consent Decree;

a. an agreement, enforceable by the Settling Defendants and the United States, to abide by the obligations and restrictions established by Paragraph 27.b. of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

b. the execution and recordation in the Registry of Deeds or other appropriate land records office of Bristol County, Commonwealth of Massachusetts, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 27.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 27.b of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the Commonwealth and its representatives, (iii) the Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Within 45 days of entry of this Consent Decree, Settling Defendants shall submit to EPA for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix G, that is enforceable under the laws of the Commonwealth of Massachusetts, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

(2) a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (2001) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement shall be recorded with the Registry of Deeds or other appropriate office of Bristol County. Within 30 days of the recording

of the easement, Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

29. For purposes of Paragraphs 27 [Access] and 28 [Restrictions] of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If (a) any access or land/water use restriction agreements required by Paragraphs 28.a or 28.b of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, (b) any access easements or restrictive easements required by Paragraph 28.c of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of entry of this Consent Decree, or (c) Settling Defendants are unable to obtain an agreement pursuant to Paragraph 26.c.(1) or Paragraph 27.c.(1) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this consent decree within 45 days of the date of entry of this consent decree, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 27 or 28 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

30. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's and the Commonwealth's efforts to secure such governmental controls.

31. Notwithstanding any provision of this Consent Decree, the United States retains all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

32. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit five (5) copies to EPA and two (2) copies to the Commonwealth of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating

to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendants shall submit these progress reports to EPA and the Commonwealth by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph 53.b of Section XIV (Certification of Completion). If requested by EPA or the Commonwealth, Settling Defendants shall also provide briefings for EPA and the Commonwealth to discuss the progress of the Work.

33. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven (7) days prior to the performance of the activity.

34. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 1, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

35. Within 20 days of the onset of such an event, Settling Defendants shall furnish to Plaintiff and the Commonwealth a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

36. Settling Defendants shall submit five (5) copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit two (2) copies of all such plans, reports and data to the Commonwealth. Upon request by EPA Settling Defendants shall submit in electronic form all portions of any report or other deliverable Settling Defendants are required to submit pursuant to the provisions of this Consent Decree.

37. All reports and other documents submitted by Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

38. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the Commonwealth, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within 14 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

39. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 38(a), (b), or (c) [Approval of Plans], Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 38(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

40. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 38(d) [Approval of Plans], Settling Defendants shall, within 14 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 41 [Resubmitted Plans] and 42 [Resubmissions].

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 38(d) [Approval of Plans], Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

41. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

42. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution

procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

43. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

44. Within 20 days of lodging this Consent Decree, Settling Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

45. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

46. EPA's Project Coordinator and the Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis.

XIII. PERFORMANCE GUARANTEE

47. In order to ensure the full and final completion of the Work, Performing Settling Defendants shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of \$29,000,000 (hereinafter "Estimated Cost of the Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. A policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;

e. A demonstration by one or more Settling Defendants that each such Settling Defendant meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Settling Defendant, or (ii) a company that has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with at least one Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

48. **[For initial guarantees under subsections a, b, c, d, or f:]** Settling Defendants have selected, and EPA has approved, as an initial Performance Guarantee **[insert type(s)]** pursuant to Paragraph 47, in the form attached hereto as Appendix G. Within ten days after the Effective Date of this Consent Decree, Settling Defendants shall execute or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents attached hereto as Appendix G, and such Performance Guarantee(s) shall thereupon be fully effective. Within thirty days of entry of this Consent Decree, Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Regional Financial Management Officer in accordance with Section XXVI (“Notices and Submissions”), with a copy to the Regional Financial Assurance Specialist, the United States, EPA and the State as specified in Section XXVI.

[Alternative 48. For initial guarantees under subsection e:] Settling Defendants have selected, and EPA has approved, as an initial Performance Guarantee a demonstration of satisfaction of financial test criteria pursuant to Paragraph 47.e with respect to **[list corporations making the guarantee if fewer than all Settling Defendants]**.

49. If at any time during the effective period of this Consent Decree, the Settling Defendants provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 47(e) or Paragraph 47(f) above, such Settling Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Consent Decree, including but not limited to (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within ninety days after the close of each such entity's fiscal year; and (iii) the notification of EPA within ninety days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Consent Decree, and the terms "current closure cost estimate" "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work.

50. In the event that EPA determines at any time that a Performance Guarantee provided by any Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Settling Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Defendants, within thirty days of receipt of notice of EPA's determination or, as the case may be, within thirty days of any Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 47 that satisfies all requirements set forth in this Section XIII. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 52.b.(2). Settling Defendants' inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Defendants to complete the Work in strict accordance with the terms hereof.

51. The commencement of any Work Takeover pursuant to Paragraph 91 [Work Takeover] shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraphs 47(a), (b), (c), (d), or (f), and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 47(e), Settling Defendants shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff,

counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

52. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If Settling Defendants believe that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 47, Settling Defendants may, on any anniversary of the Effective Date of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Settling Defendants shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 52.b.(2). If EPA decides to accept such a proposal, EPA shall notify the petitioning Settling Defendants of such decision in writing. After receiving EPA's written acceptance, Settling Defendants may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Settling Defendants may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraph 52.b .

b. Change of Form of Performance Guarantee.

(1) If, after entry of this Consent Decree, Settling Defendants desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Settling Defendants may, on any anniversary date of the Effective Date of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 52.b.(2) . Any decision made by EPA on a petition submitted under this Subparagraph (b)(i) shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(2) Settling Defendants shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Defendants shall submit such proposed revised or alternative form of Performance Guarantee to the EPA Regional Financial Management Officer, with a copy to the Regional Financial Assurance Specialist in accordance with Section XXVI ("Notices and Submissions"). EPA shall notify Settling Defendants in writing of its

decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this Subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Settling Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Regional Financial Management Officer within thirty days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Section XXVI ("Notices and Submissions"), with copies to the Regional Financial Assurance Specialist, the United States, EPA and the State as specified in Section XXVI.

c. Release of Performance Guarantee. If Settling Defendants receive written notice from EPA in accordance with Paragraph 53 that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Settling Defendants in writing, Settling Defendants may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Settling Defendants shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this Paragraph. In the event of a dispute, Settling Defendants may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XIV. CERTIFICATION OF COMPLETION

53. Completion of the Work.

a. Within 90 days after Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, and EPA and the Commonwealth. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the Commonwealth, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to

complete the Work, provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 15.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants and after a reasonable opportunity for review and comment by the Commonwealth, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XV. EMERGENCY RESPONSE

54. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 55, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA Emergency Response Unit, Region 1. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the Commonwealth take such action instead, Settling Defendants shall reimburse EPA and the Commonwealth all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

55. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants by Plaintiff).

XVI. PAYMENTS FOR RESPONSE COSTS

56. Payments by Settling Defendants for Past Response Costs.

a. Within 30 days of the Effective Date, Settling Defendants shall pay to EPA \$2,943,903.72 in payment for Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number ____, EPA Site/Spill ID Number 01-29,

and DOJ Case Number _____. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Massachusetts following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

c. The total amount to be paid by Settling Defendants pursuant to Subparagraph 56.a shall be deposited in the Shpack Landfill Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

57. Payments by Settling Defendants for Future Response Costs.

a. Settling Defendants shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send Settling Defendants a bill requiring payment that consists of a Region 1 standard cost summary, which is a line-item summary of costs in dollars by category of costs (including but not limited to payroll, travel, indirect costs, and contracts) incurred by EPA, DOJ, the Commonwealth, and their contractors. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 58. Settling Defendants shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 01-29, and DOJ Case Number _____. Settling Defendants shall send the check(s) to:

(For Delivery by First Class Mail)
EPA Superfund - Region 1
P.O. Box 360197M
Pittsburgh, PA 15251

(For Delivery by Overnight Mail)
EPA Superfund - Region 1
U.S. EPA 360197
Mellon Client Service Center Room 670
500 Ross Street
Pittsburgh, PA 15262-0001

b. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

c. The total amount to be paid by Settling Defendants pursuant to Subparagraph 57.a shall be deposited in the Shpack Landfill Superfund Site Special Account

within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

58. Settling Defendants may contest payment of any Future Response Costs under Paragraph 57.a if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 57. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the Commonwealth of Massachusetts and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 57. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

59. In the event that the payments required by Subparagraph 56.a are not made within 30 days of the Effective Date or the payments required by Paragraph 57 are not made within 30 days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 77 [Stipulated Penalties - Major]. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 57.

60. Payments by Settling Federal Agencies for Past and Future Response Costs. As soon as reasonably practicable after the effective date of this Consent Decree, and consistent with

Subparagraph (a)(ii) of this Paragraph, the United States, on behalf of the Settling Federal Agencies, shall:

a. (i) Pay to the EPA Hazardous Substance Superfund \$ _____, in reimbursement of Past Response Costs; and \$ _____ in reimbursement of Future Response Costs.

(ii) If the payment to the EPA Hazardous Substances Superfund required by this Subparagraph is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the effective date of this Consent Decree, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.

b. Pay to the Settling Defendants \$ _____ in reimbursement of the Settling Defendants' past response costs and future response costs, in the form of a check or checks made payable to _____ and sent to _____, or by Electronic Funds Transfer in accordance with instructions provided by the Settling Defendants.

61. In the event that payments required by Paragraph 60 are not made within 120 days of the effective date of this Consent Decree, Interest on the unpaid balance shall be paid at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the effective date of this Consent Decree and accruing through the date of the payment.

62. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

XVII. INDEMNIFICATION AND INSURANCE

63. Settling Defendants' Indemnification of the United States.

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States (with the exception of the Settling Federal Agencies) and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States (with the exception of the Settling Federal Agencies) all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendants,

their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the *Settling Defendants nor any such contractor shall be considered an agent of the United States.*

b. The United States shall give Settling Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 63, and shall consult with Settling Defendants prior to settling such claim.

64. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

65. No later than 15 days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Work pursuant to Subparagraph 53.b of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of five million dollars, combined single limit, and automobile liability insurance with limits of five million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

66. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the

greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

67. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation & Restoration, EPA Region 1, within 24-hours of when Settling Defendants first knew that the event might cause a delay. Within five days thereafter, Settling Defendants shall provide in writing to EPA and the Commonwealth an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

68. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the Commonwealth, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

69. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 66 and 67, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to

be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

70. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

71. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

72. **Statements of Position.**

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 73 or Paragraph 74.

b. Within 30 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 73 or 74. Within 14 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 73 or 74, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 73 and 74.

73. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree.

Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the Settling Defendants or EPA.

b. The Director of the Office of Site Remediation & Restoration, EPA Region 1, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 73.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 73.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 73.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Director of the Office of Site Remediation & Restoration is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 73.a.

74. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 72, the Director of the Office of Site Remediation & Restoration, EPA Region 1 will issue a final decision resolving the dispute. The decision of the Director of the Office of Site Remediation & Restoration shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph L of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

75. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 84. Notwithstanding the stay of payment,

stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

76. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 77 and 78 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

77. The following stipulated penalties shall accrue per violation per day for any noncompliance except those identified in Paragraph 78 :

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 5,000	1st through 14th day
\$ 10,000	15th through 30th day
\$ 15,000	31st day and beyond

78. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to Section X of the Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,000	1st through 14th day
\$ 2,000	15th through 30th day
\$ 5,000	31st day and beyond

79. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 91 of Section XXI (Covenants by Plaintiffs), Settling Defendants shall be liable for a stipulated penalty in the amount of \$5,000,000.

80. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Office of Site Remediation & Restoration, EPA Region 1, under Paragraph 73.b or 74.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute

Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

81. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

82. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to EPA Region 1, Attn: Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID # 01-29, the DOJ Case Number _____, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions).

83. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

84. Penalties shall continue to accrue as provided in Paragraph 80 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

85. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made

pursuant to Paragraph 82. Interest on any unpaid balance due to the United States shall accrue at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

86. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

87. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS BY PLAINTIFF

88. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraph 90 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA for performance of the Work and for recovery of Past Response Costs and Future Response Costs. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 56.a of Section XVI (Payments for Response Costs). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

89. In consideration of the payments that will be made by the Settling Federal Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraph 90 of this Section, EPA covenants not to take administrative action against the Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA for performance of the Work and for recovery of Past Response Costs and Future Response Costs. EPA's covenant shall take effect upon the receipt of the payments required by Paragraph 60.a of Section XVI (Reimbursement of Response Costs). EPA's covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. EPA's covenant extends only to the Settling Federal Agencies and does not extend to any other person.

90. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants, and EPA and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agencies, with respect to all matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants, and EPA and the federal natural resource trustees reserve all rights against the Settling Federal Agencies, with respect to:

a. claims based on a failure by Settling Defendants or the Settling Federal Agencies to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. liability based upon the Settling Defendants' ownership or operation of the Site, or upon the Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants;

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

e. criminal liability;

f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action;

g. liability for additional response actions that EPA determines are necessary, but that cannot be required pursuant to Paragraph 15 (Modification of the SOW or Related Work Plans) or Paragraph 21 (Settling Defendants' Obligation To Perform Further Response Actions);

h. liability arising from the past, present or future disposal, release, or threat of release of radioactive hazardous substances not addressed by the United States Army Corps of Engineers pursuant to the Formerly Utilized Sites Remedial Action Program; and

i. liability for costs incurred or to be incurred by the United States pursuant to the Formerly Utilized Sites Remedial Action Program and related to the Site.

91. Work Takeover

a. In the event EPA determines that Settling Defendants have (i) ceased implementation of any portion of the Work, or (ii) are seriously or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to the Settling Defendants. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Settling Defendants a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 10-day notice period specified in the previous Paragraph, Settling Defendants have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify Settling Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph.

c. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 73, to dispute EPA's implementation of a Work Takeover under the previous Paragraph. However, notwithstanding Settling Defendants' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 96(b) until the earlier of (i)

the date that Settling Defendants remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XIX (Dispute Resolution), Paragraph 73.b, requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XIII of this Consent Decree, in accordance with the provisions of Paragraph 51 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the Settling Defendant(s) fail to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 51, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Payment for Response Costs).

92. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES

93. Covenant Not to Sue by Settling Defendants. Subject to the reservations in Paragraph 95, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Work, past response actions, and Past and Future Response Costs as defined herein or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Massachusetts Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

Except as provided in Paragraph 97 (Waiver of Claims Against Certain MSW Parties) and Paragraph 103 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 90 (g) - (i), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

94. Covenants by Settling Federal Agencies. Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Work, past response actions and Past and Future Response Costs as defined herein or this Consent

Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300), except that Settling Federal Agencies agree not to assert any such demand for costs incurred pursuant to the Formerly Utilized Sites Remedial Program. Furthermore, this covenant does not preclude the United States from seeking recovery (other than claims against the Hazardous Substance Superfund) of costs incurred under the Formerly Utilized Sites Remediation Program related to the Site, or for contribution with respect to such costs.

95. The Settling Defendants reserve, and this Consent Decree is without prejudice to: (a), claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA; and (b) contribution claims against the Settling Federal Agencies in the event any claim is asserted by the United States against the Settling Defendants under the authority of or under Paragraph 90 of Section XXI (Covenants by Plaintiff), but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States against Settling Defendants.

96. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

97. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of Municipal Solid Waste (MSW) at the Site, if the volume of MSW disposed, treated or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site.

98. The waiver in preceding Paragraph shall not apply to any claim or cause of action that a Settling Defendant may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines that: (a) the MSW contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; (b) the person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or § 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927; or (c) the person impeded or

is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

99. Except as provided in Paragraph 97 (Waiver of Claims Against Certain MSW Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 97 (Waiver of Claims Against Certain MSW Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

100. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants and the Settling Federal Agencies are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs, Future Response Costs, and the Work, as all of these terms are defined herein. The "matters addressed" in this settlement do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants (and EPA and the federal natural resource trustees assert rights against Settling Federal Agencies) coming within the scope of such reservations. The "matters addressed" in this settlement also do not include any costs or work performed by the United States pursuant to the Formerly Utilized Sites Remedial Action Program.

101. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

102. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

103. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants by Plaintiff).

XXIV. ACCESS TO INFORMATION

104. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

105. Business Confidential and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

106. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXV. RETENTION OF RECORDS

107. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 53.b of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Defendant must also retain,

and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

108. The United States acknowledges that each Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

109. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

110. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

111. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Settling Federal Agencies, and the Settling Defendants, respectively.

As to the United States:

and

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # _____

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
Re: DJ # _____

and

Susan Studlien, Director
Office of Site Remediation & Restoration
United States Environmental Protection Agency
Region 1
1 Congress Street, Suite 1100 (HIO)
Boston, MA 02114-2023

As to EPA:

Melissa G. Taylor
EPA Project Coordinator
United States Environmental Protection Agency
Region 1
1 Congress Street, Suite 1100 (HBO)
Boston, MA 02114-2023

As to the Regional Financial
Management Officer:

Lee Clouthier
United States Environmental Protection Agency
Region 1
1 Congress Street, Suite 1100 (MCO)
Boston, MA 02114-2023

As to the Regional Financial
Assurance Specialist:

Bruce Marshall, Section Chief
United States Environmental Protection Agency
Region 1
1 Congress Street, Suite 1100 (HBS)
Boston, MA 02114-2023

As to the Settling Defendants:

[Name]
Settling Defendants' Project Coordinator
[Address]

In addition, all submissions to the Commonwealth shall be sent to:

[Name and Address]

XXVII. EFFECTIVE DATE

112. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered, or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XXVIII. RETENTION OF JURISDICTION

113. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

114. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the description and/or map of the Site.

"Appendix D" is the complete list of the Non-Owner Settling Defendants.

"Appendix E" is the complete list of the Owner Settling Defendants.

"Appendix F" is the complete list of the Settling Federal Agencies.

"Appendix G" is the [Draft Easement].

"Appendix H" is the form of Performance Guarantee.

XXX. COMMUNITY RELATIONS

115. Settling Defendants shall propose to EPA their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendants shall

participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXI. MODIFICATION

116. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendants. All such modifications shall be made in writing.

117. Except as provided in Paragraph 15 (Modification of the SOW or Related Work Plans), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendants, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the Commonwealth with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii), may be made by written agreement between EPA, after providing the Commonwealth with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

118. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

119. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

120. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. SIGNATORIES/SERVICE

121. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

122. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

123. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree.

Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXXIV. FINAL JUDGMENT

126. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

127. Upon approval of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 20__.

United States District Judge